



August 2, 2001

Mr. Antonio H. Molinar
Agency Director
Midland Judicial District
Community Supervision & Correction Department
P.O. Box 3038
Midland, Texas 79702

OR2001-3365

Dear Mr. Molinar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150227.

The Midland Judicial District Community Supervision and Corrections Department (the "department") received a request for 1) the personnel file of a named former department employee, and 2) the names of all Midland County probation officers who have voluntarily ended their employment with the department or who have been released from employment since January 1, 2001. You inform us that you seek a decision as to the required public disclosure of "certain personnel records," and that you have submitted "certain pages" from the former employee's personnel file. You submit no information that you represent to be responsive to the second category of the request, nor do you assert any claim of exception for such information. Thus, to the extent that the department possesses information responsive to the request other than what you have submitted, we assume that the department has released that information. If not, then the department must promptly release the information to the requestor. *See* Gov't Code §§ 552.301, .302. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 76.006(g) of the Government Code provides that "[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential." The term "department" in this provision means "a community supervision and corrections department

established under [chapter 76 of the Government Code].” Gov’t Code § 76.001(4). The provision thus applies to information held by the department. After examining your argument and the submitted information, we conclude that some of the documents submitted to this office, which we have marked, are confidential under section 76.006(g). Therefore, pursuant to section 552.101 of the Government Code, the department must withhold the documents that we have marked.

You inform us that the department has withheld the former employee’s home address and telephone number “on the basis that he signed a written election dated April 16, 1998, in compliance with section 552.024 of the Texas Government Code stating that he does not wish to have his home address and telephone number released to the public.” We thus assume you to claim section 552.117(1) of the Government Code for the former employee’s home address and home telephone number. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Because you inform us that the former employee elected, prior to the department’s receipt of the request for information, to keep his home address and telephone number confidential, we conclude that the department must withhold this information under section 552.117(1).

In summary, the department must withhold from the requestor the information we have marked under section 552.101 of the Government Code in conjunction with section 76.006(g) of the Government Code. The department must also withhold the former employee’s home address and telephone number under section 552.117(1) of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

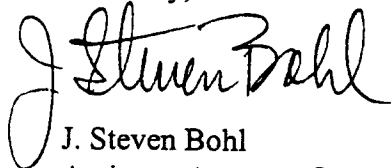
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 150227

Enc: Submitted documents

c: Mr. Ian Heald
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(w/o enclosures)